

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CARLOS LATIMER,

Petitioner,

v.

**CITY OF CHICAGO POLICE BOARD
AND THE SUPERINTENDENT OF
CHICAGO POLICE,**

Respondent.

No. 12 CH 26867

Calendar 10

MEMORANDUM AND ORDER

Petitioner, Carlos Latimer, has filed a Petition for Administrative Review.

I. Background

On October 9, 2007, Petitioner, Carlos Latimer, ("Latimer") was accused of punching his ex-girlfriend, and violating a protective order. Criminal charges were brought against Latimer, and the Independent Police Review Authority ("IPRA") opened an investigation. At the outset of the investigation, Latimer was stripped of his police powers and placed in a desk job in the City's 311 unit. Latimer received full pay and benefits throughout the investigation. In the criminal matter, Latimer pled guilty to violation of the protective order and the battery charge was dropped.

On November 1, 2011, over four years after the incident occurred, the police superintendent brought charges against Latimer. An administrative hearing on the charges was held on April 3, 4, and 18, 2012. On May 31, 2012, an order was entered by the police board ("Board") discharging Latimer from the Chicago Police Department ("Department").

II. Petition for Administrative Review

A. The Decision of the Board

Latimer first argues that the decision of the Board to discharge him as a result of the October 9, 2007 incident was against the manifest weight of the evidence.

An administrative agency's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident; if the record contains evidence to support the agency's decision it should be affirmed. Trettenero v. Police Pension Fund of the City of Aurora, 333 Ill. App. 3d 792, 802 (2d Dist. 2002). [B]ecause the weight of the evidence and the credibility of the witnesses are within the province of the [agency], there need only be some competent evidence in the record to support its findings. Id. "[A] reviewing court may not re-evaluate the credibility of witnesses or resolve conflicting evidence." Alden Nursing Center-Morrow, Inc. v. Lumpkin, 259 Ill. App. 3d 1027, 1033 (1st Dist. 1994). "If the issue before the reviewing court is merely one of conflicting testimony and credibility of witnesses, the administrative board's decision should be sustained." O'Boyle v. Personnel Brd., 119 Ill. App. 3d 648, 653 (1st Dist. 1983).

In this case, the hearing officer heard testimony from Latimer, Angela Rush, Taryn Johnson (Latimer's wife) and several character witnesses on behalf of Latimer. This case presented a classic "he said, she said" situation. After listening to all the testimony, the Board ultimately found Angela Rush's testimony credible, and that of Latimer and Taryn Johnson not credible. There is competent evidence in the record to support the Board's findings on this issue. Trettenero v. Police Pension Fund of the City of Aurora, 333 Ill. App. 3d 792, 802 (2d Dist. 2002).

B. Violation of Due Process

Next, Latimer argues that his due process rights were violated because the Department failed to bring charges against him in a timely manner, and also to conduct a hearing on those charges in a timely manner.

Procedural due process claims question the constitutionality of the procedures used to deny a person's life, liberty or property. Mark Lyon v. DCFS, 209 Ill. 2d 264, 272 (2004). Every citizen has the right to pursue a trade, occupation, business, or profession. Id. This inalienable right constitutes both a property and liberty interest entitled to protection of the law as guaranteed by the due process clauses of the Illinois and Federal constitutions. Id. The due process clause requires provisions of a hearing "at a meaningful time and in a meaningful manner." Cleveland Board of Ed. v. Loudermill, 470 US 532, 547 (1985). Due process is flexible and calls for such procedural protections as the particular situations demand. Stull v. DCFS, 239 Ill. App. 3d 325, 335 (5th Dist. 1992). Due process does not require a specific time frame in which to provide a hearing but requires a hearing at a meaningful time. Id.

In addition, the United States Supreme Court has adopted certain factors for the specific determination of whether a delay in the provision of procedure, such as the one in this case, offends due process. Mark Lyon v. DCFS, 209 Ill. 2d 264, 277 (2004). Those factors are: (1) the importance of the private interest and the harm to the interest because of the delay; (2) the government's justification for the delay and its connection to the underlying government interest; and (3) the likelihood that the interim decision is mistaken. Id.

In this case, Latimer has a significant interest in his chosen profession, an officer for Chicago Police Department. This interest was stripped from Latimer when he was removed from the police force and placed in a desk job. The Board argues that Latimer's removal is ameliorated by the fact that he was given full pay and benefits while working for the 311 call unit. This argument is unavailing, however, because it is the deprivation of the "chosen profession" that causes the deprivation. The fact that an individual is paid the same salary does not redress this deprivation, and the Board cites no case that stands for this proposition.

On the other hand, the Board also has a similarly significant interest in public safety. Latimer admittedly was in violation of a protective order, and pled guilty to same. In addition, this was not the first incident of reported domestic violence, and Latimer was ordered by superiors to stay away from Angela Rush. The Department clearly has an interest in keeping the public safe, and to further this objective, the Department must keep disobedient officers who violate the law off the force.

As to the second factor, the Board argues that notwithstanding the delay in this case, the investigator assigned to this matter routinely requested and was granted extensions beyond the 30 days required to complete investigations. While the actual extensions and the reasons for those extensions are not mentioned in the record, the Board confirmed that those extensions were properly requested, and the Board determined the reasons for those extensions were permissible.

Finally, as to the third factor, it is unlikely that the interim decision to remove Latimer from the police force during the investigation was done in error. In this case, there were only two witnesses to this offense, Latimer and Angela Rush. Similarly, the evidence in this case was straight forward, the 911 recording, the pictures of Rush's injuries, and the hospital/medical records. Latimer does not argue that he attempted to find witnesses that were unavailable or that evidence was destroyed because of the delay. The delay in this case had no impact on the witness availability, or the availability of evidence. Therefore, there was little to no margin of error that the interim decision to remove Latimer from the police force was done in error. In balancing these factors, the delay in this case did not violate due process.

C. Laches

Finally, Latimer argues that the delay in bringing charges should be barred by laches. A suit is barred by laches where there is: (1) conduct on the part of the defendant giving rise to the situation of which the complaint is made and for which the plaintiff seeks a remedy; (2) delay in asserting plaintiff's rights, the plaintiff having had notice or knowledge of defendant's conduct and the opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the plaintiff would assert the right on which the plaintiff bases the suit; and (4) injury or prejudice to the defendant in the event the relief is accorded to the plaintiff. O'Brien v. Meyer, 281 Ill. App. 3d 832 838 (1st Dist. 1996). This doctrine has been applied to

administrative cases. Mank v. The Board of Fire and Police Comm., 7 Ill. App. 3d 478, 485-86 (5th Dist. 1972).

For the reasons stated above, in balancing the Lyon factors, Latimer was not prejudiced by the delay by the Board, nor can Latimer argue that he was not on notice of the Board's actions against him. This action, therefore, is not barred by laches.

III. Conclusion

For the foregoing reasons, the Decision of the Police Board is affirmed.

Enter: _____

Thomas R. Allen 2043

Judge Thomas R. Allen

